

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re J.L., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

J.L.,

Defendant and Appellant.

G048124

(Super. Ct. No. DL043475)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Gregory W. Jones, Judge. Affirmed.

Robert Booher, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Charles C. Ragland and Marissa Bejarano, Deputy Attorneys General, for Plaintiff and Respondent.

* * *

The juvenile court found J.L. was a person described in Welfare and Institutions Code section 602¹ after he admitted allegations charging him with one count of residential burglary, with a nonaccomplice present during the burglary. (Pen. Code, §§ 459, 460, subd. (a), 667.5, subd. (c)(21).) Though J.L. was eligible for deferred entry of judgment (DEJ) pursuant to section 790 et seq., the juvenile court found J.L. “unsuitable” for DEJ. J.L. appeals from the dispositional order challenging the finding he was not suitable for DEJ. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Around 8:00 p.m. on August 12, 2012, J.L., intending to steal, entered an apartment in the complex where he lived. Moments later, the victim returned home and confronted J.L., who fled, taking nothing.

The victim identified J.L. to the police. A few hours later, officers interviewed the minor at his apartment. The minor admitted the break in, stating he wanted to “get money.” He also admitted previously stealing three bicycles, which he sold in order to buy marijuana.

The district attorney determined J.L. was eligible for DEJ and the juvenile court ordered the probation department to prepare a DEJ suitability report. The report indicated J.L. lived in a stable home with his mother, stepfather, and younger twin sisters. J.L.’s mother reported he behaved well at home, but had been associating with “negative peers,” who smoked marijuana. She reported J.L. began smoking marijuana and ditching school in seventh grade after a family tragedy: His uncle murdered J.L.’s two young cousins and stabbed his aunt 19 times, though she survived. Since then, the minor had trouble concentrating in school.

The suitability report further indicated J.L. was then currently enrolled as a junior at Access Continuation. He had previously attended three different high schools,

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

experiencing disciplinary problems at each. He attended the first school as a freshman, but had significant truancy issues. He transferred to a second high school as a sophomore, but his continued truancy and marijuana use resulted in his transfer to a third school. He did not finish the school year, however, because he was expelled for ditching and smoking marijuana.

After J.L.'s burglary arrest, his mother put him in a month-long residential treatment program for his marijuana use. Before entering the drug rehabilitation center, J.L. attended counseling sessions for two months.

The suitability report described J.L. "as a barely mature individual capable of understanding the inappropriateness of his behavior." The report stated "the minor has shown himself to be a threat to the property of others and should be held accountable for his actions. However, in that this marks the minor's first referral to juvenile court, it is felt less restrictive measures should be afforded before formal probation is considered."

The report recommended J.L. be granted DEJ on "the usual terms and conditions of probation," together with a 10-part "additional specific program" that included submission to search and seizure, therapy, 200 hours of community service, legal awareness and substance abuse education, restitution, drug testing, daily attendance at school with "any absence [reported] to Probation by 10:00 a.m. the same day," obeying all school rules, and a nighttime curfew. However, the report cautioned, that J.L.'s "success will not only depend on the minor's commitment to completion of his court orders and his compliance with the terms of DEJ, but also on the parents [*sic*] ability to provide the structure and supervision to ensure the minor maintains law abiding behavior."

At the DEJ suitability hearing, J.L.'s counsel submitted "on probation's recommendation that he be found suitable." The juvenile court stated it had read and reviewed the report, but rejected the DEJ recommendation. The court explained: "[T]here are several reasons for my feeling he is not suitable, his performance in school,

behavior in school, substance abuse issues that are documented in the report, all lead me to believe that he needs more intensive supervision than that which would be provided on DEJ. [¶] So accordingly, I am finding him to be not suitable.”

Thereafter, J.L. admitted the allegations of the section 602 petition, and the juvenile court declared J.L. a ward of the court and placed him on “formal supervised probation.” The court committed J.L. to a juvenile facility for 20 days, but postponed the surrender date for four months until July 1, 2013, to allow J.L. to complete 20 days on the juvenile court work program. The court told J.L. that if he completed the 20-day work program, complied with his probation conditions, and violated no law, then “when you come back here to turn yourself in on the 20 days, July 1st, I will vacate that commitment and you wouldn’t have to do it.”

The juvenile court imposed the standard probation conditions, including the requirement that J.L. had to keep his probation officer informed of his phone number and address and had to report to his probation officer “as instructed,” together with the “additional” requirements the probation department had recommended for J.L. in the DEJ suitability report (e.g., search and seizure, drug testing, regular school attendance with absences reported to his probation officer, curfew, etc.).

The juvenile court told J.L., “I just want you to understand I don’t want to see you do those 20 days in custody. But when you come back here [in four months] that report needs to read in a very positive manner, needs to show that you went to school every day, that there [are] no positive drug tests, that you’re obeying all the conditions of probation and you have done the work program, and then we will vacate that 20-day custody commitment.”

DISCUSSION

J.L. argues the juvenile court abused its discretion to deny him deferred entry of judgment. We disagree, for reasons which we will explain.

1. Deferred Entry of Judgment and Standard of Review

Voters enacted the DEJ provisions of section 790 et seq. as part of Proposition 21, The Gang Violence and Juvenile Crime Prevention Act of 1998, in March 2000. (*Martha C. v. Superior Court* (2003) 108 Cal.App.4th 556, 558 (*Martha C.*).) “The sections provide that in lieu of jurisdictional and dispositional hearings, a minor may admit the allegations contained in a section 602 petition and waive time for the pronouncement of judgment. Entry of judgment is deferred. After the successful completion of a term of probation, on the motion of the prosecution and with a positive recommendation from the probation department, the court is required to dismiss the charges. The arrest upon which judgment was deferred is deemed never to have occurred, and any records of the juvenile court proceeding are sealed. (§§ 791, subd. (a)(3), 793, subd. (c).)” (*Ibid.*)

A minor is eligible for DEJ under section 790 if all of the following circumstances apply: “(1) The minor has not previously been declared to be a ward of the court for the commission of a felony offense. [¶] (2) The offense charged is not one of the offenses enumerated in subdivision (b) of Section 707. [¶] (3) The minor has not previously been committed to the custody of the Youth Authority. [¶] (4) The minor’s record does not indicate that probation has ever been revoked without being completed. [¶] (5) The minor is at least 14 years of age at the time of the hearing. [¶] (6) The minor is eligible for probation pursuant to Section 1203.06 of the Penal Code.” (§ 790, subd. (a)(1)-(6); *Martha C.*, *supra*, 108 Cal.App.4th at pp. 558-559; see also Cal. Rules of Court, rule 5.800(a)(3).) Here, the parties agree J.L. is eligible for DEJ.

“While such eligibility is a necessary condition for DEJ, it is not alone a sufficient basis.” (*Martha C.*, *supra*, 108 Cal.App.4th at p. 560.) The juvenile court must also find the minor is “suitable” for DEJ in light of the factors specified in section 791, subdivision (b) and rule 5.800(d)(3) of the California Rules of Court. (*In re Sergio R.* (2003) 106 Cal.App.4th 597, 607 (*Sergio R.*).) These “‘suitability’ factors” include the

minor's age, maturity, educational background, family relationships, motivation, any treatment history, and any other factors relevant to the determination of whether the minor is a person who would be benefited by education, treatment, or rehabilitation. (*Ibid.*; § 791, subd. (b); Cal. Rules of Court, rule 5.800(d)(3).)

“When the juvenile court denies a request for DEJ where the minor is statutorily eligible, we review the decision under the abuse of discretion standard. [Citation.]” (*In re Damian M.* (2010) 185 Cal.App.4th 1, 5; *Sergio R.*, *supra*, 106 Cal.App.4th at p. 607.)

2. The Juvenile Court Did Not Abuse its Discretion.

The juvenile court appears to have followed the procedures it was supposed to follow, and considered the factors it was supposed to consider regarding J.L.'s suitability for DEJ. Furthermore, the juvenile court's unsuitability finding is supported by the evidence.

The probation department suitability report showed J.L. had an extensive history of drug use, truancy, and discipline problems, all of which had resulted in him being transferred from two high schools and expelled from a third. Additionally, while the mother reported these problems began in seventh grade after a family tragedy, and we appreciate the difficulty the family must have had in dealing with that unspeakable tragedy, the record demonstrates that J.L.'s parents were not able to provide the structure and supervision necessary to ensure J.L. would succeed on DEJ.

Under these circumstances, the juvenile court's conclusion J.L. “needs more intensive supervision than that which would be provided on DEJ” supports the unsuitability finding, and thus the denial of DEJ was neither arbitrary nor capricious. (*People v. Lamb* (2006) 136 Cal.App.4th 575, 582 [abuse of discretion standard]; *In re Marriage of Rosevear* (1998) 65 Cal.App.4th 673, 682-683 [same].)

DISPOSITION

The order is affirmed.

THOMPSON, J.

I CONCUR:

O'LEARY, P. J.

ARONSON, J., Concurring.

I concur in the majority's resolution of this appeal, but utilize a slightly different analysis. J.L. bases his argument on the juvenile court's imposition of nearly identical probation conditions to those the probation officer sought when recommending deferred entry of judgment (DEJ), and the court's subsequent statement it would vacate a 20-day commitment if J.L. complied with those conditions. J.L. contends this was inconsistent with a finding J.L. would not benefit from education, treatment, and rehabilitation. Consequently, J.L. concludes the court abused its discretion in denying DEJ because it "implicitly" found J.L. would benefit from DEJ. (*Martha C. v. Superior Court* (2003) 108 Cal.App.4th 556, 562 [juvenile court erred in denying DEJ because it implicitly found minor would benefit from education, treatment, and rehabilitation].)

True, the court did not directly address whether J.L. would benefit from education, treatment, and rehabilitation. The court instead based its denial of DEJ on the finding that J.L. would benefit from the "more restrictive commitment" of formal probation, and subsequently imposed a 20-day custody commitment in addition to the probation conditions recommended by the probation officer.

The custody commitment demonstrates the court's implicit conclusion J.L. lacked the *motivation* to benefit from education, treatment, and rehabilitation without the threat of confinement. Motivation is a suitability factor for DEJ under Welfare and Institutions Code section 791, subdivision (b), and California Rules of Court, rule 5.800(d)(3). Although the court could have imposed custody had J.L. violated the probation conditions imposed under DEJ, I cannot conclude the court arbitrarily or unreasonably decided J.L. required "more intensive supervision." The court, of course, was in the best situation to evaluate J.L.'s motivation. Thus, the court could have concluded the most effective and perhaps only way to motivate J.L. was to impose a specific punishment and thereby impress on J.L. the consequences that awaited him if he

did not immediately and earnestly follow the court's probation directives. Because motivation is a suitability factor, the comparative effectiveness of supervision under DEJ and formal, supervised probation is a matter falling within the sound discretion of the juvenile court. J.L. has not shown the court abused that discretion.

ARONSON, J.